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No. 586

IN THE

Supreme Court of the United States

OCTOBER TERM, 1959

ARTHUR STETER,

Petitioner,

v.

NEW YORK STATE EDUCATION COMMISSIONER, NEW YORK CITY BOARD OF HIGHER EDUCATION, and BROOKLYN COLLEGE,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT COMMISSIONER OF EDUCATION IN OPPOSITION

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Text of Pertinent Statutes and By-Laws

28 U. S. C. 1343 (3)

"§ 1343. Civil Rights.

"The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:

. . . . . .

"(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

§ 310 New York State Education Law.

"§ 310. Appeals or petitions to commissioner of education and other proceedings.

"Any person conceiving himself aggrieved may appeal or petition to the commissioner of education who is hereby authorized and required to examine and decide the same; and the commissioner of education may also institute such proceedings as are authorized under this article and his decision in such appeals, petitions or proceedings shall be final and conclusive, and not subject to question or review in any place or court whatever. Such appeal or petition may be made in consequence of any action:

"1. By any school district meeting.

"2. By any district superintendent and other officers, in forming or altering or refusing to form or alter, any school district, or in refusing to apportion any school moneys to any such district or part of a district.

"3. By a county treasurer or other distributing agent in refusing to pay any such moneys to any such district.

"4. By the trustees of any district in paying or refusing to pay any teacher, or in refusing to admit any scholar gratuitously into any school or on any other matter upon which they may or do officially act.

"5. By any trustees of any school library concerning such library, or the books therein, or the use of such books.

"6. By any district meeting in relation to the library or any other matter pertaining to the affairs of the district.

"7. By any other official act or decision of any officer, school authorities, or meetings concerning any other matter under this chapter, or any other act pertaining to common schools."

§ 6202

Article 125, New York State Education Law.

"§ 6202. Powers and duties.

"Such board of higher education shall be a separate and distinct body corporate, shall have the duties and powers of trustees of colleges as set forth in this chapter, unless otherwise specifically provided in this article, and the institutions and educational units which such board shall conduct shall be part of the common school system and shall have the powers and privileges of colleges and shall be subject to the visitation of the regents of the university. The control of the educational work of such institutions shall rest solely in the board of higher education which shall administer all educational units controlled by it, as and under the general name and title of the college of the city of New York; but each unit of such college shall be given an appropriate and distinctive designation, and any existing unit, constituting a college for women, shall retain its present, distinctive name.

. . . .

"The board shall establish positions, departments, divisions and faculties; appoint and in accordance with

the provisions of law fix salaries of teachers and other employees therein; establish and conduct courses and curricula and prescribe conditions of student admission, attendance and discharge. The board shall furnish the benefits of collegiate education gratuitously to citizens who are actual residents of the city, except as otherwise provided in this section and in sections sixty-two hundred three and sixty-two hundred four of this chapter, and who are qualified for admission to any regular undergraduate course of study leading to a baccalaureate degree and to any course of study in any preparatory, training or model school connected with any institution under its control; and it may furnish gratuitously or otherwise for male and female students, actual residents (except as otherwise provided in section sixty-two hundred four) or employees of said city and non-matriculated students, additional technical, professional and special courses of study and other educational advantages. * * *"

By-Laws of the Board of Higher Education of the City of New York, Sections 18.4, 18.6 and 18.7.

"18.4 Student Discipline.

"a. Each student enrolled in any college or school under the control of the Board and every organization, association, publication, club or chapter shall obey all the rules and regulations and orders of the duly established college authorities, shall give punctual and courteous attention to all college duties, shall use the property of the institution with care and economy, shall conform to the requirements of good manners and good morals, and shall obey the laws of the City, State and Nation within college grounds and elsewhere.

"b. Each faculty shall have power to establish rules of conduct and regulations in greater detail than the general requirements set forth above and it shall have power to appoint a discipline committee to which it may, in its discretion, invite student cooperation or participation therein. This committee, if appointed, shall try cases of misconduct and recommend penalties."

"§ 18.6. Duties of Deans. A dean, in cases of violation of college regulations, breach of the peace, or damage to property by a student or student organization may reprimand such student or student organization verbally or by publication, suspend for a period of time not exceeding one term or deprive of specific college privileges and advantages. He may also recommend the dismissal of a student from college but that penalty may be imposed only by the president or pursuant to a majority vote of the appropriate school faculty or faculty council concerned."

"§ 18.7 Appeals. Appeals from the decision of a disciplinary committee or a dean may be made to the president. His decision shall be final except in case of dismissal. Appeal from the decision of dismissal for any cause may be made to the Board."

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Opinions Below

The opinion of the District Court (App. D, p. 20 of Petition) is reported at 161 F. Supp. 549. The opinions of the United States Court of Appeals for the Second Circuit (App. A, p. 1 and App. B, p. 10 of Petition) and the dissenting opinion thereof (App. C, p. 16 of Petition) are reported at 271 F. 2d 13.